

ADOPTED 7/26/94

BOSTON REDEVELOPMENT AUTHORITY

CHAIRMAN'S STATEMENT

July 21, 1994 - 2:00 P.M.

This is a public hearing before the Boston Redevelopment Authority, being held in conformance with Article 27M of the Boston Zoning Code to consider an Institutional Master Plan and an Ambulatory Care Building/Parking Structure Project at 145 Parker Hill Avenue, Boston, Massachusetts proposed by New England Baptist Hospital.

This hearing was duly advertised on July 15, 1994 in the Boston Herald.

In a Boston Redevelopment Authority hearing on a proposed petition by the Authority, the Authority staff members will first present their case and are subject to questioning by members of the Authority only. Thereafter, others who wish to speak in favor of the proposed petition are afforded an opportunity to do so under the same rules of questioning. Following that, those who wish to speak in opposition may do so, again under the same rules of questioning. Finally, the proponents are allowed a period of five to ten minutes for rebuttal, if they so desire.

The proponents will now be introduced.

MEMORANDUM

26 JULY 1994

TO: BOSTON REDEVELOPMENT AUTHORITY AND
MARISA LAGO, DIRECTOR

FROM: RICHARD GARVER, ACTING ASSISTANT DIRECTOR FOR
INSTITUTIONAL PLANNING AND DEVELOPMENT
E. OWEN DONNELLY, DEPUTY DIRECTOR

SUBJECT: PUBLIC HEARING CONCERNING AN INSTITUTIONAL MASTER
PLAN AND THE AMBULATORY CARE BUILDING/PARKING
STRUCTURE PROJECT FOR NEW ENGLAND BAPTIST HOSPITAL

SUMMARY: This memorandum requests that the Authority: (1) Approve the New England Baptist Hospital (the "Hospital") Institutional Master Plan (the "Master Plan"); (2) Authorize the Director to issue a certification that the Ambulatory Care Building/Parking Structure Project (the "Proposed Project") is in conformity with the Master Plan; (3) Authorize the Director to recommend approval, conditional upon design review, of the petition to the Board of Appeal for zoning relief in connection with the Proposed Project; (4) Approve and authorize the Director to enter into a Cooperation Agreement with the Hospital in connection with the Master Plan and the Proposed Project; (5) Authorize the Director to execute and deliver all other agreements and documents in connection with the Cooperation Agreement, the Proposed Project and the Master Plan; and (6) Authorize the Director to issue an Adequacy Determination for the Proposed Project upon completion of the Authority's Article 31 development review process.

Introduction

The New England Baptist Hospital is a not-for-profit, acute care, tertiary referral hospital with 205 beds, including 175 medical/surgical beds, 10 intensive care beds, and 20 hospital-based rehabilitation and skilled nursing beds. The present focus of the Hospital is in medical surgical specialties, in particular orthopedics and cardiology. The Hospital remains committed to its ongoing programs of graduate medical education, its School of Nursing and clinical research for the well-being of the present and future patients. The Hospital has a 19-acre campus located at 125 Parker Hill Avenue, on the top of Parker Hill, in the Mission Hill neighborhood. The Hospital campus abuts McLaughlin Playground and is surrounded largely by residential uses.

SBMEM/71
072694/1

The Hospital has identified a need for expanded ambulatory care and supporting parking facilities in order to respond to the shifts in delivery of health care.

The Hospital requests approval of an Institutional Master Plan, attached hereto as Exhibit A, and authorization for the Director to recommend approval, conditional upon design review, of the petition to the Board of Appeal for zoning relief in connection with the construction of the Proposed Project at 145 Parker Hill Avenue. The Hospital also requests approval of a Cooperation Agreement and authorization for the Director to execute the Cooperation Agreement and other agreements and documents in connection with the Cooperation Agreement, the Proposed Project and the Master Plan. In addition, the Hospital requests issuance of an Adequacy Determination for the Final Project Impact Report and certification that the Proposed Project conforms with the Master Plan.

Institutional Master Plan

The Hospital has prepared an Institutional Master Plan, "New England Baptist Hospital Master Plan 1994-1999", in response to the requirements of Article 27M, Mission Hill Interim Planning Overlay District. The Master Plan describes the services and facilities of the Hospital, how those services and facilities are expected to develop over the next five years, and the general strategy for campus development.

Currently the Hospital's campus is made up of moderately scaled buildings that range in height from one to six stories. Interspersed between and around the buildings are well landscaped courtyards and open spaces. With its extensive landscape areas and a low FAR of .6, the campus fits comfortably in its residential context.

The Master Plan will maintain and enhance the existing quality of the Hospital's campus by proposing both small building additions and significant new landscape improvements. The Ambulatory Care Building and Parking Structure is the first and most significant project scheduled in the Master Plan. Each building in the Proposed Project is modest in height and size. As a part of the Proposed Project a major new public open space will be created by the Hospital using land owned by the Hospital and the City. Projects subsequently scheduled in the Master Plan are either small additions to existing buildings or existing space modified for different uses. Additional landscape improvements are also proposed, some in conjunction with the removal of 5 vacant residential buildings on the Hospital campus. A building height limit of 100 feet is established for the campus. If all of the projects proposed in the Master Plan were constructed it would increase the campus FAR to 1.0 well below the 2 allowed by the Code. Further, the Master Plan limits on-campus parking capacity to 675 vehicles and commits to greater use of off-campus parking lots and reduction in the number of single occupancy vehicles for travel to the Hospital. In sum, the Master Plan will ensure that the Hospital campus will continue to be compatible with its neighborhood as it grows moderately.

Project Description

The Hospital proposes to construct a project (the "Proposed Project") that has three components: an Ambulatory Care Building, a Parking Structure, and a new public open space. The Ambulatory Care Building will be 72,000 square feet with three floors and a basement. The building will be set back approximately 50 feet from Parker Hill Avenue and will be physically linked to other buildings on the Hospital campus by a covered walkway. It will house outpatient diagnostic and treatment facilities, accessory physician offices and related patient support services. The building exterior will be made of brick similar to that used in existing buildings on campus. The height of the Ambulatory Care building will be 51 feet above grade on the south facade and 60 feet on the north facade.

The second component of the Proposed Project is the Parking Structure which will be constructed largely on an existing parking lot on the campus. The Parking Structure will have a capacity of 422 cars and a net increase of 277 new spaces above the current capacity of the parking lot. The Parking Structure will be set back a substantial distance from Parker Hill Avenue and behind the Ambulatory Care Building. It will be 3 levels above grade and 1-1/2 levels at or below grade with a height of 23 feet along its northern edge and 35 feet along its sloping southern edge. The exterior will be made of brick similar to that used in existing buildings on campus. The Parking structure will have direct access to the Ambulatory Care Building by means of an underground connection.

The third element of the Proposed Project is the creation of extensive landscape improvements in the area to the east of the Ambulatory Care Building and Parking structure encompassing not only a significant portion of the existing open green area on the Hospital's campus (known as the "Meadow") but also a portion of adjacent McLaughlin Playground as well (known as the "Fourth Tier"). The central idea of the proposed landscape improvements is to recall the historic character of Parker Hill through creation of a large passive recreation area of more than five acres in size that includes extensive plantings of shade and orchard trees and pedestrian paths. At an elevation of 235 feet, this new area would provide dramatic and panoramic views to its users.

The Hospital has worked closely with the staffs of the BRA, City of Boston Parks and Recreation Department (the "Parks Department") and the City of Boston Conservation Commission (the "Conservation Commission") in planning the new public open space. The Boston Parks Commission has approved the Fourth Tier and Meadow improvements and construction of the Proposed Project within 100 feet of a City park. The Hospital will grant to the Conservation Commission a perpetual conservation restriction on the Meadow. A copy of the draft conservation restriction document is enclosed as "Exhibit B" for informational purposes. Further, the Boston Civic Design Commission voted on June 7, 1994 to recommend approval of the schematic design of the Proposed Project to the BRA.

Article 31 Development Review

On December 9, 1993 the Hospital voluntarily submitted a Project Notification Form to the BRA for an Article 31 development review of the Proposed Project. The BRA issued a Scoping Determination on January 20, 1994 that described the issues associated with the Proposed Project and Master Plan and how they were to be analyzed. The Hospital responded on April 15, 1994 by submitting a Draft Project Impact Report to the BRA. The BRA issued a Preliminary Adequacy Determination on June 8, 1994 which indicates that sufficient progress is being made regarding concerns raised about the Proposed Project and Master Plan so that it is appropriate to proceed with obtaining the BRA approval. The Final Project Impact Report was submitted to the BRA on July 13, 1994 and is currently undergoing staff review.

Community Review

The Master Plan and the Proposed Project have undergone extensive community review in accordance respectively with Article 27M and Article 31 of the Code. The community review has been organized through the Mission Hill Planning and Zoning Advisory Committee (the "PZAC") which has sponsored eight neighborhood meetings at which the Master Plan and/or the Proposed Project were presented and discussed. Pursuant to Article 27M, Section 13 of the Code, the PZAC voted to recommend approval of the Master Plan subject to the following conditions:

- That a conservation easement be granted for a stated period, striving for a perpetual easement in a form that is acceptable to the City;
- That the fourth tier plan be negotiated with the City and community that responds to the concerns of the community;
- That the so-called "Bolling Lot" be approved as part of the Master Plan only if the entire property is included; and
- That the Proposed Project plans be refined to minimize the intrusion into the Meadow.

The Hospital has adequately responded to each condition as follows:

- Prior to the issuance of any building permit for the Proposed Project, the Hospital shall deliver to the City of Boston's Conservation Commission in escrow, an executed, perpetual conservation restriction for an approximately 1.5 acre portion of the Hospital owned land. The conservation restriction shall be recorded in the Suffolk County Registry of Deeds upon the issuance of the Certificate of Occupancy for the Proposed Project;

- The Hospital has worked with staff of the BRA, Parks Department and community representatives to achieve a conceptual plan that is acceptable to all parties. Indicative of this is the June 27, 1994 vote by the Parks Commission approving the fourth tier plan;
- The Hospital has agreed to include the "Bolling Lot," for off-campus parking, in its Master Plan only if it acquires the entire property; and
- The Hospital has agreed to move the Ambulatory Care Building and entry driveway an additional eight feet from the Meadow.

On July 20, 1994 the PZAC voted to recommend approval of the Proposed Project.

Community Benefits

The Hospital will be obligated in the Cooperation Agreement, to be entered into with the Boston Redevelopment Authority (attached hereto as Exhibit C), to provide an extensive community benefits program that includes the following:

- Creation of a new public open space on the fourth tier of McLaughlin Playground and the Meadow owned by the Hospital. The cost to the Hospital will be \$100,000;
- Grant a perpetual conservation restriction to the Conservation Commission on a 1-1/2 acre portion of the Meadow;
- Maintain McLaughlin Playground for an additional ten years at a cost of at least \$500,000 to the Hospital;
- Provide \$100,000 for housing stabilization in Mission Hill prior to obtaining permits for the demolition of 5 vacant residential structures on the Hospital campus;
- Widen a section of Sachem Street by granting an easement to the City and providing \$30,000 for the construction;
- Support the Mission Link bus service for another 5 years at a cost of \$210,000;
- Continue, for another 10 years, the program which provides Mission Hill and Boston residents up to eight scholarships per year to the Hospital's School of Nursing; and
- Property taxes will be paid on a substantial portion of the Ambulatory Care Building and a lesser portion of the Parking Structure. In addition, the Hospital is currently discussing a PILOT payment with the City Assessor.

- The Hospital will comply with Boston's Jobs Policy and the City's Minority and Women Business Enterprise requirement with respect to the Proposed Project's construction.

Transportation Access Plan Agreement

The Master Plan and Proposed Project have been reviewed by the Boston Transportation Department ("BTD"). A Transportation Access Plan Agreement ("TAPA") is being prepared which includes an appropriate mitigation program that has been agreed to in concept by BTD and the Hospital. A TAPA satisfactory to the Commissioner of BTD will be executed prior to the issuance of a building permit for the construction of the Proposed Project.

Conclusion

BRA staff recommends that the Authority: (1) Approve the New England Baptist Hospital Master Plan 1994-1999; (2) Authorize the Director to issue a certification that the Proposed Project is in conformity with the Master Plan; (3) Authorize the Director to recommend approval, conditional upon design review, of the petition to the Board of Appeal for zoning relief in connection with the Proposed Project; (4) Approve and authorize the Director to enter into a Cooperation Agreement with the Hospital in connection with the Master Plan and the Proposed Project; (5) Authorize the Director to execute and deliver all other agreements and documents in connection with the Cooperation Agreement, the Proposed Project and the Master Plan; and (6) Authorize the Director to issue an Adequacy Determination for the Proposed Project upon completion of the Authority's Article 31 development review process.

Appropriate votes follow:

VOTED: That pursuant to Article 27M-13 of the Code, the Authority has conducted a duly noticed public hearing and received the recommendation of the Mission Hill Planning and Zoning Advisory Committee on the Institutional Master Plan submitted by the Hospital, entitled "New England Baptist Hospital Master Plan - 1994-1999", dated July 15, 1994, a copy of which is attached hereto as Exhibit A, and the Authority hereby approves the Master Plan, the Authority having found that (i) the Master Plan conforms to the general plan for the City as a whole, and (ii) on balance, nothing in the Master Plan will be injurious to the neighborhood or otherwise detrimental to the public welfare; and further

VOTED: That the Director of the Authority be and hereby is authorized to issue a certification in the name of the Authority pursuant to Article 27M-13 of the Code, that the Ambulatory Care Building/Parking Structure

EXHIBIT B

Project (the "Proposed Project") is in conformity with the Master Plan; and further

VOTED: That the Boston Redevelopment Authority finds that the Proposed project meets the criteria set forth in Article 6, Section 3 and Article 27M, Section 21 of the Boston Zoning Code and hereby authorizes the Director to recommend approval, conditional upon design review, of the petition to the Board of Appeal for zoning relief in connection with the Proposed Project;

VOTED: That the Authority hereby approves the proposed Cooperation Agreement in substantially the form attached hereto as Exhibit C, and the Authority hereby authorizes the Director to execute and deliver in the name of and on behalf of the Authority the Cooperation Agreement, with such changes as she, in her discretion, shall determine to be necessary or desirable, her execution and delivery of said Agreement or the taking of any such action to be conclusive evidence of her determination and of the authority granted to her hereunder. The Cooperation Agreement shall be on file in the offices of the Authority; and further

VOTED: That the Authority hereby authorizes the Director to execute and deliver in the name of and on behalf of the Authority, all other agreements and documents in connection with the Cooperation Agreement, the Proposed Project and the Master Plan, such agreements and documents to include such terms and conditions as the Director deems appropriate and in the best interests of the Authority, and the execution and delivery of such agreements or documents or the taking of any such action to be conclusive evidence of her determination and of the authority granted to her hereunder. Such other agreements and documents shall be on file in the offices of the Authority; and further

VOTED: That the Authority hereby authorizes the Director to issue an Adequacy Determination for the Proposed Project upon completion of the Authority's Article 31 development review process.

EXHIBIT B

66624.64271 555 37212.d7
7/21/94 2:29 pm

CONSERVATION RESTRICTION

NEW ENGLAND BAPTIST HOSPITAL, a Massachusetts, not-for-profit corporation organized under Massachusetts General Laws ("M.G.L.") Chapter 180, with a principal place of business at 125 Parker Hill Avenue, Boston, Suffolk County, Massachusetts 02120 (the "Grantor"), hereby grants to THE CITY OF BOSTON, acting by and through its CONSERVATION COMMISSION, established under M.G.L. ch. 40, §8C, whose principal place of business is Boston City Hall, One City Hall Plaza, Boston, Massachusetts 02201 (the "Grantee"), a perpetual conservation restriction on the land located in Boston, Suffolk County, Massachusetts described in Exhibit A attached hereto and incorporated herein by reference (the "Premises"). The Premises contain approximately 65,340 s.f. of land, and comprise a portion of the parcel conveyed by a deed from Robert B. Brigham Hospital to New England Baptist Hospital, recorded at the Suffolk County Registry of Deeds at Book 8357, Page 423.

WHEREAS, in a Cooperation Agreement with the Boston Redevelopment Authority dated _____, 1994 (the "Cooperation Agreement"), Grantor agreed to grant a Conservation Restriction with respect to the Premises; and

WHEREAS, the Premises provide significant scenic and aesthetic value to the public as a natural area and open space which has not been subjected to development incompatible with said uses; and

WHEREAS, Grantor and Grantee recognize the uniqueness of the Premises as a distinctive Massachusetts landscape embodying the special character of the region in which the Premises is located, and they have the common purpose of conserving the natural values of the Premises for this generation and future generations; and

WHEREAS, Grantor and Grantee seek to create this Conservation Restriction in accordance with the provisions of M.G.L. ch. 184, §§31-33 for the purpose of retaining in perpetuity the Premises predominantly in a scenic, open condition after they have been improved by the Grantor as provided for herein; and

WHEREAS, the Conservation Restriction hereby imposed will yield significant public benefits due to the uniqueness of the Premises, and this Conservation Restriction is consistent with state and local conservation programs in Boston, as evidenced by the approval of the Boston Conservation Commission, the Boston City Council, and the Mayor of Boston, as well as of the Secretary of the Massachusetts Executive Office of Environmental Affairs.

NOW, THEREFORE, the Grantor, for itself and its successors and assigns, hereby covenants and agrees with the Grantee as follows:

1. Prohibited Activities. Except as otherwise herein provided, or expressly permitted by Grantee in writing, Grantor, shall neither perform nor willfully permit others to perform any of the following acts on the Premises:

- (a) construction or placing of buildings or other structures, signs (other than suitable regulatory and identifying signs), billboards or other advertising, mobile homes, trailers, automobiles or other vehicles on, above or below, the Premises, except that underground utility tunnels and underground, at grade, and above-ground utilities (and the like) and related appurtenances such as wires, pipes, lines and other conduits may be constructed, installed, located and relocated over, on and under the Premises, subject to the provisions of paragraph 2(c) hereof;
- (b) dumping or placing of soil or other substances or materials as landfill, or dumping or placing of vehicle bodies or parts, junk, trash, refuse, solid or chemical waste or other unsightly or offensive materials, or the installation of underground storage tanks;
- (c) cutting, removal or destruction of trees, grasses, shrubs or other vegetation;
- (d) mining, excavating, dredging or removal of loam, peat, sand, gravel, soil, rock or other mineral substances or natural deposit, except as necessary for proper drainage or soil conservation and then only in a manner which does not impair the purposes of this Conservation Restriction;
- (e) any commercial or industrial use or any institutional use inconsistent with the purposes of this Conservation Restriction;
- (f) use of any motorized vehicles of any nature or kind, including but not limited to cars, trucks, motorcycles, all-terrain vehicles and snowmobiles, except such as may be reasonably required by police officers, fire officers, or other governmental agents in carrying out their lawful duties and except for cars, trucks and farm vehicles used for purposes permitted by this Conservation Restriction;
- (g) use of the Premises except for outdoor passive recreational purposes or other purposes which permit the Premises to remain predominantly in its natural condition;
- (h) activities detrimental to drainage, flood control, water or soil conservation, water quality, or erosion control; or
- (i) other acts or uses which in the reasonable opinion of Grantee, are detrimental to preservation of the Premises as provided for in this Conservation Restriction.

Notwithstanding the foregoing, Grantee acknowledges that Grantor will be constructing landscape and other improvements to the Premises as part of Grantor's development of an Ambulatory Care Building and Parking Structure ("Project") on Grantor-owned land adjacent to the Premises. Grantor shall have the right to construct the Project

(including the aforesaid improvements to the Premises) in accordance with plans approved by the Boston Redevelopment Authority and City of Boston Department of Parks and Recreation, as set forth in the Cooperation Agreement. Said improvements to the Premises shall not include Utility Work (as defined herein) other than to serve the Premises and/or McLaughlin Playground. Grantor shall also maintain the Premises in perpetuity, as provided for in paragraph 4 herein.

2. Reserved Rights. Notwithstanding anything contained in paragraph 1, Grantor, its successors and assigns, reserves the right to conduct or permit the following activities on the Premises:

- (a) The planting of trees and shrubs and the mowing of grass;
- (b) Any activities designed to enhance the ecological or natural historic value of the Premises or to enhance the awareness of such values, including but not limited to the placing of informative signs and benches;
- (c) Subject to the approval of Grantee, the installation of underground utility tunnels and underground, at grade, and above-ground utilities (and the like) and related appurtenances such as wires, pipes, lines, poles and other conduits ("Utility Work") to serve the Premises and/or McLaughlin Playground;
- (d) The Grantor may, subject to Grantee approval, undertake Utility Work to serve land and improvements now and hereafter owned by Grantor ("Grantor's Remaining Land"); provided, however, that in requesting Grantee approval for such work, Grantor shall demonstrate that it (i) has no practicable alternative to the undertaking of such Utility Work at the Premises, and (ii) has taken all reasonable efforts to minimize the potential extent and effect of such Utility Work on the Premises;
- (e) Subject to the approval of Grantee, the temporary placement of construction equipment and/or material used or to be used in connection with the maintenance and/or improvement of Grantor's Remaining Land, and such other activities reasonably necessary in connection with Grantor's Remaining Land, provided that should such use result in any damage to the Premises, Grantor shall, to the extent reasonably practicable, restore the Premises to the condition existing prior to the placement of such equipment and/or material or the undertaking of such activities. In requesting Grantee approval to place construction equipment and/or material temporarily on the Premises, Grantor shall demonstrate that it (i) has no practicable alternative to such placement of equipment and/or material, and (ii) has taken all reasonable efforts to minimize the extent and duration of the proposed encroachment, as well as the potential effects of such encroachment on the Premises; and
- (f) The maintenance of the Premises, including, without limitation, the planting and selective cutting and pruning of trees, brush or other vegetation, and the

removal of same for the purposes of improving scenic views and implementing disease prevention measures.

The exercise of any right reserved by Grantor under this paragraph 2 shall be in compliance with the then-current Zoning Code applicable to the Premises, and all other applicable federal, state and local laws. The inclusion of any reserved right in this paragraph 2 requiring a permit from a public agency does not imply that Grantee takes any position on whether such permit should be issued. This Conservation Restriction does not authorize any person to trespass or injure the person or property of another; and it does not excuse any person from complying with other applicable laws, regulations, by-laws or ordinances.

3. Consistency with M.G.L. ch. 184. The foregoing conservation restriction herein described is created pursuant to M.G.L. ch. 184, §§ 31-33 for the purpose of maintaining the Premises, as hereafter improved by the Grantor in connection with the Project and as provided for in paragraph 2 herein, in a predominantly scenic and open condition consistent with its intended use as a passive recreation area. The restrictions herein shall be construed so as to comply with said provisions of law.

4. Maintenance Responsibility of Grantor. It shall be the responsibility of Grantor to maintain the Premises. Grantor shall provide Grantee with a yearly maintenance plan and schedule, along with the name of the person or entity responsible for execution of the maintenance plan. Nothing herein contained shall impose any affirmative duty upon Grantee to maintain or care for the Premises.

5. Access by Grantee. This Conservation Restriction does not grant to Grantee, or to the public at large, any right to enter upon the Premises or any portion thereof, except as follows:

- (a) Grantor hereby grants to Grantee and its inhabitants a permanent easement of access to pass and repass upon the Premises on foot only for the purposes of passive and quiet enjoyment, including walking and picnicking, together with access to the Premises as hereinafter set forth. The Premises and the access thereto are not intended to be used for any other recreational purposes or for purposes which generate noise, due to the proximity of the Premises to a hospital. Grantor does not assume any responsibility to Grantee, its inhabitants, or anyone else in connection with its or their use of this Conservation Restriction, the Premises, or the access thereto, which use shall be at its and their discretion and risk. In addition, without limiting the generality of the foregoing, as set forth in M.G.L. ch. 21, § 17C, Grantor shall not be liable to members of the public who use any easement granted by this Conservation Restriction, the Premises, or any access thereto.
- (b) Grantee shall have the right, at its sole expense, to perform any act required to preserve, conserve or promote the natural habitat of wildlife, fish or plants located on the Premises. With the approval of Grantor, which approval shall not be unreasonably withheld, Grantee shall have the right to erect and from

time to time, to replace, at appropriate locations near the boundaries of the Premises, suitable signs identifying Grantee as the holder of this Conservation Easement.

6. Legal Remedies of Grantee. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to the condition provided for herein (it being agreed that Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee. Grantor and its successors and assigns covenants and agrees to reimburse Grantee for all reasonable costs and expenses (including, without limitation, counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof. By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises. Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Restriction shall not be deemed or construed to be a waiver of such rights. If any provision of this Conservation Restriction shall be held invalid to any extent, the remaining provisions shall not be affected thereby.

7. Subsequent Transfers. Grantor agrees to incorporate the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including without limitation, a leasehold interest.

8. Required Notification of Transfers. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Premises, or any part thereof or interest therein (including a lease). Grantee shall notify Grantor in writing at least thirty (30) days before it assigns this Conservation Restriction or should Grantee cease to exist, the vesting of the rights herein granted to a successor agency of the City of Boston.

9. Notice and Approval With Respect to Grantor's Activities. Whenever approval by Grantee is required under the provisions of this Conservation Restriction, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. A copy of all such notices shall be sent to the City of Boston Law Department. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, such approval shall not be unreasonably withheld or conditioned, and Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefor. If an emergency situation requiring immediate action affecting the Premises arises, Grantor shall, to the extent reasonably practical, notify Grantee for approval of the action to be taken to rectify the emergency situation.

10. Binding Effect: Interpretation. The burdens of this Conservation Restriction shall be deemed to run with the Premises, and shall be enforceable in perpetuity against Grantor, Grantor's successors in title to the Premises, and any person holding any interest therein, by Grantee, its successors and assigns and its duly designated officers, directors, members, employees or agents as holders of this Conservation Restriction. This Conservation Restriction shall be in addition to and not in lieu of any other restrictions or easements of record affecting the Premises. Grantee is authorized to record or file any notices or instruments appropriate to ensure the enforceability of this Conservation Restriction. Upon written request, Grantor shall execute any such instrument, in form agreed to by Grantor and Grantee in their reasonable discretion.

11. Effective Date. Grantor and Grantee intend that the rights, obligations and restrictions arising hereunder shall take effect upon its execution by Grantee and Grantor, its administrative approval pursuant to M.G.L. Ch. 184, §32, and its recordation in the Suffolk County Registry of Deeds.

12. Estoppel Certificates. Upon request by Grantor, Grantee shall, within thirty (30) days, execute and deliver to Grantor any document requested, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction.

No documentary stamps need be affixed to this instrument.

IN WITNESS WHEREOF, the President and Treasurer of the Grantor have executed, acknowledge and delivered this instrument under seal as of the _____ day of _____, 1994.

NEW ENGLAND BAPTIST HOSPITAL

By: _____
Raymond C. McAfoose, President

By: _____
Edward Fraioli, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss _____, 1994

Then personally appeared the above-named Raymond C. McAfoose, President of New England Baptist Hospital and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of New England Baptist Hospital, before me,

Notary Public:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss _____, 1994

Then personally appeared the above-named Edward Fraioli, Treasurer of New England Baptist Hospital, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said New England Baptist Hospital, before me,

Notary Public:
My Commission Expires:

GRANTEE'S ACCEPTANCE OF CONSERVATION RESTRICTION

The foregoing Conservation Restriction is hereby found to be in the public interest and is hereby accepted this _____ day of _____, 1994 in accordance with M.G.L. c.40, §8C.

BOSTON CONSERVATION COMMISSION

By: _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. _____, 1994

Then personally appeared the above-named _____, _____ of the Boston Conservation Commission, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said Boston Conservation Commission, before me,

Notary Public

My commission expires: _____

[Copy of City Council Order Authorizing Acceptance of Conservation Restriction]

The undersigned Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts hereby certifies that the foregoing Conservation Restriction has been approved as being in the public interest by the Secretary pursuant to M.G.L. ch. 184, §27 on the ____ day of _____, 1994.

Secretary, Executive Office of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. _____, 1994.

Then personally appeared the above-named _____, Secretary of the Executive Office of Environmental Affairs, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said Executive Office of Environmental Affairs, before me.

Notary Public

My commission expires: _____

EXHIBIT C

THE COMMONWEALTH OF MASSACHUSETTS

The undersigned Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts hereby certifies that the foregoing Conservation Restriction has been approved as being in the public interest by the Secretary pursuant to M.G.L. ch. 184, §32 on this ____ day of _____, 1994.

Secretary, Executive Office of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. _____, 1994

Then personally appeared the above-named _____, Secretary of the Executive Office of Environmental Affairs, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said Executive Office of Environmental Affairs, before me,

Notary Public

My commission expires: _____

EXHIBIT C

COOPERATION AGREEMENT FOR NEW ENGLAND BAPTIST HOSPITAL INSTITUTIONAL MASTER PLAN AND AMBULATORY CARE BUILDING/PARKING STRUCTURE PROJECT

THIS AGREEMENT is entered into this ____ day of _____, 1994 by and between the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate created and existing pursuant to Chapter 121B of the Massachusetts General Laws, as amended, acting in its capacity as the planning board for the City of Boston pursuant to Chapter 652 of the Acts of 1960, as amended, and having a principal place of business at One City Hall Square, Boston, Massachusetts 02201-1007 (the "Authority"), and NEW ENGLAND BAPTIST HOSPITAL, a Massachusetts not-for-profit corporation with a principal place of business at 125 Parker Hill Avenue, Boston, Massachusetts 02120 ("NEBH" or the "Hospital"). The Authority and the NEBH, collectively, shall be referred to herein as the "parties."

RECITALS

WHEREAS, NEBH has proposed to construct on its campus in the Mission Hill neighborhood of Boston, a 72,000 square foot Ambulatory Care Building and a 422 car Parking Structure, and to construct on a portion of the NEBH campus, as well as on contiguous property owned by the City of Boston, certain landscape improvements (such building, structure and landscape improvements being hereinafter referred to as the "Ambulatory Care Project");

WHEREAS, NEBH has voluntarily agreed to submit the Ambulatory Care Project to the development review provisions of Article 31 of the Boston Zoning Code ("Code"), including the preparation of a Project Impact Report;

WHEREAS, NEBH has received certain approvals with respect to the Ambulatory Care Project, which approvals include: (1) a Final Adequacy Determination ("FAD") issued by the Authority on _____, 1994 pursuant to Article 31 of the Code, approving the Final Project Impact Report ("FPIR"); (2) a recommendation for approval of the schematic design by the Boston Civic Design Commission pursuant to Article 28 of the Code, by a vote taken on June 7, 1994, following public hearings held on April 5, 1994 and June 7, 1994; (3) schematic design approval by the Authority, by letter dated _____, 1994, pursuant to the Authority's Development Review Procedures, dated 1985, revised 1986; (4) approval on June 27, 1994 of the Boston Parks and Recreation Commission pursuant to City of Boston Ord. 7-4.11; and (5) approval with conditions on June 27, 1994 of the Boston Parks and Recreation Commission to undertake the "Fourth Tier" improvements described herein;

WHEREAS, pursuant to Article 27M - 13 of the Code, NEBH formulated an institutional master plan entitled "New England Baptist Hospital Master Plan 1994-1999" dated July 15, 1994 ("Master Plan"), attached hereto as Exhibit A and incorporated herein, which Master Plan includes a Parking Mitigation and Management Plan and describes NEBH's general strategy for campus development, as well as projects which NEBH proposes to develop on its campus, including the Ambulatory Care Project ("Master Plan Projects");

WHEREAS, on July __, 1994, the Authority approved the Master Plan and the Ambulatory Care Project; and

WHEREAS, in connection with NEBH's formulation of the Master Plan and construction of the Ambulatory Care Project, NEBH and the Authority wish to set forth certain obligations and commitments of NEBH related to (i) the strengthening and stabilization of the Mission Hill neighborhood, and (ii) the implementation of the Master Plan and the Ambulatory Care Project.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Authority and NEBH agree as follows:

1. Planning and Design. NEBH will proceed with the planning and design of its campus in a manner consistent with the development concept, land uses and density contemplated in the Master Plan (subject to the Development Review Process set forth in Section 4 herein). In connection with the development of the Ambulatory Care Project, the Applicant will conduct any additional reviews requested by the Authority in accordance with the Authority's "Development Review Procedures" dated 1985, revised 1986, which is attached hereto as Exhibit B and incorporated herein ("Development Review Procedures"). No structure shall be erected, reconstructed or structurally changed or extended on the Hospital campus unless all drawings and specifications therefor shall have been subject to design review and approval by the staff of the Authority pursuant to its Development Review Procedures as consistent with the Master Plan. The Authority shall perform its review and approval and other functions under this section and other provisions of this Agreement promptly and with all reasonable dispatch, and in accordance with the provisions of this Agreement. The Authority shall approve or disapprove any proposed change or submission within ten (10) business days of its submission to the Authority, except that those matters subject to the Development Review Procedures shall be governed thereby. When the Authority disapproves any proposed change or submission, its disapproval shall include a detailed written explanation therefor.

2. Development Review of Ambulatory Care Project. By agreement, NEBH is in the process of completing a development review of the Ambulatory Care Project in accordance with Article 31 of the Code ("Article 31"), although NEBH is not subject to such review under the terms of Article 31. NEBH and the Authority hereby agree that on April 15, 1994, NEBH submitted the Draft Project Impact Report ("DPIR") for the Ambulatory

Care Project and on July 13, 1994 submitted an FPIR for said project. The Authority issued a Preliminary Adequacy Determination on the DPIR for the Ambulatory Care Project on June 8, 1994. The Authority shall make a Final Adequacy Determination on the FPIR in a timely manner in accordance with the provisions of Article 31. The Authority may require NEBH to take all practical measures, including without limitation, reasonable and economically feasible measures that are consistent with the scope of the proposed development of the Ambulatory Care Project, in order to mitigate the demonstrable negative impacts of said project, as the same are identified in the FPIR.

3. Transportation Access Plan. NEBH shall, prior to obtaining any building permit for the Ambulatory Care Project, enter into a Transportation Access Plan Agreement, as reasonably approved by the City of Boston Transportation Department. Said Transportation Access Plan Agreement shall include monitoring mechanisms and mitigation measures to address negative transportation impacts which may be created by the construction or operation of the Ambulatory Care Project. The Transportation Access Plan Agreement will include, although not be limited to, a definition of parking management and demand reduction measures and mitigation measures to be undertaken by NEBH, including the institution of a 20% MBTA T-Pass subsidy for Hospital employees and a limit on the number of available parking spaces at the Hospital's campus of 675 spaces by January 1, 1998.

4. Development Review Process. NEBH and the Authority hereby agree that the development review process to be observed by the parties pursuant to this Agreement ("Development Review Process") shall be as set forth in the Development Review Procedures, including review of the Development Concept, and Schematic Design, Design Development and Contract Documents. Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Development Review Procedures.

5. Approval of Schematic Design Drawings. The Authority hereby approves NEBH's submission of Schematic Design Drawings for the Ambulatory Care Project and by the signing hereof, indicates its satisfaction with the first stage of submission required by the Development Review Procedures.

6. Notification of Inspectional Services Department. The Authority will promptly notify the Inspectional Services Department ("ISD") that plans submitted for the Ambulatory Care Project to ISD are consistent with (i) the Schematic Design Drawings approved by the Authority, and (ii) the description of the Ambulatory Care Project in the Master Plan, at such time as the Director determines that such plans are so consistent.

7. Changes to Ambulatory Care Project. Throughout the Development Review Process, it is NEBH's responsibility to promptly notify the Authority of proposed changes to the exterior of the Ambulatory Care Project, where the same would constitute material changes from previously approved submissions, and to obtain approval from the Authority pursuant to the Development Review Procedures prior to incorporating such material changes into the final drawings and specifications. The Authority shall perform its review and

approval and other functions under this section and other provisions of this Agreement promptly and with all reasonable dispatch and in accordance with the provisions of this Agreement, and shall approve or disapprove any such proposed change within ten (10) business days of its submission to the Authority. When the Authority disapproves or conditionally approves any such change, or any other matter, its disapproval or conditional approval shall include a detailed written explanation therefor. If NEBH receives no notification from the Authority of disapproval within ten (10) business days after submission of any such proposed change to the Authority, such change shall be deemed unconditionally approved, provided however, that any transmittal of any request for approval of a change shall recite that approval by the Authority is due within ten (10) business days of receipt or said change shall be deemed to have been approved as set forth in Section 32 of this Agreement.

8. Construction Schedule for Ambulatory Care Project. NEBH anticipates commencing and completing the construction of the Ambulatory Care Project as follows:

	<u>Commencement</u>	<u>Completion</u>
Ambulatory Care Building	October, 1994	January, 1997
Parking Structure	November, 1994	January, 1997
Landscape Improvements	October, 1994	October, 1996

All construction commencement and completion dates are approximate and may be affected by delays due to permitting, financing, weather and other matters beyond the control of NEBH. Delay or abandonment of the Ambulatory Care Project, or any of the activities now planned, if such should occur, will not impair the zoning status of the Master Plan or the buildings and facilities described therein.

9. Construction Employment. Prior to the issuance of any building permit for the Ambulatory Care Project, NEBH shall execute and deliver to the Authority a plan to be known as the Boston Residents Construction Employment Plan, consistent with the requirements of the Boston Residents Jobs Policy established by Chapter 30 of the Ordinances of 1983, as extended by the Mayoral Executive Order extending the Boston Residents Job Policy dated July 12, 1985, and consistent with Chapter 12 of the Ordinances of 1986, as amended by Chapter 17 of said Ordinances. This plan shall set forth in detail the Hospital's commitment to ensure that its general contractor for the Ambulatory Care Project and those engaged by the general contractor, use good faith efforts to meet the following Boston Residents Construction Employment Standards:

(a) At least fifty percent (50%) of the total employee worker hours in each trade shall be filled by bona fide Boston residents;

(b) At least twenty-five percent (25%) of the total employee worker hours in each trade shall be filled by minorities; and

(c) At least ten percent (10%) of the total employee worker hours in each trade shall be filled by women.

Worker hours, as defined in such plan, shall include on-the-job training and apprenticeship positions.

10. Minority/Women Business Enterprises. NEBH agrees to use good faith efforts to comply with the following standards relative to contracting with Minority and Women Business Enterprises (as defined herein) in all construction activity undertaken in connection with the Ambulatory Care Project, including the procurement of goods and services:

at least fifteen percent (15%) of the total construction contract amount shall be expended on Minority Business Enterprises and at least five percent (5%) of the total construction contract amount shall be expended on Women Business Enterprises.

The terms "Minority Business Enterprises" and "Women Business Enterprises" shall be as defined in a certain Executive Order issued by the Mayor of the City of Boston, dated December 17, 1987 and effective December 30, 1987 (the "Executive Order").

11. Permanent Employment. Prior to the issuance of any building permit for the Ambulatory Care Project, NEBH shall execute a First Source Agreement and a Memorandum of Understanding with the Economic Development and Industrial Corporation of Boston/Office of Jobs and Community Services ("EDIC/JCS"). The First Source Agreement shall provide for NEBH's use of good faith efforts to use the services of the Private Industry Council-sponsored "Boston for Boston" placement office and employment referral service before embarking on general recruitment efforts to fill NEBH positions within the Ambulatory Care Project.

12. Construction Impacts. Prior to the issuance of any building permit for the Ambulatory Care Project, NEBH shall submit to the Boston Transportation Department ("BTD") a Construction Management Plan ("CMP") for the work to be performed in connection with development of the Ambulatory Care Project. The CMP shall identify anticipated construction parking and traffic impacts and shall specify the mitigation measures to be implemented during construction of the Ambulatory Care Project, such as the provision of covered sidewalks, designated truck routes, and noise, dust and rodent control measures. The CMP shall also provide that (i) to the extent feasible, construction material storage areas shall be located on the site of existing Lot G, away from McLaughlin Playground and away from the area of the Hospital campus known as the "Meadow", and (ii) construction workers shall be encouraged to access the Ambulatory Care Project site by public transportation, ridesharing, use of the Mission Link, use of NEBH van shuttles, or contractor-provided van shuttles from off-site parking locations. Prior to the issuance of any building permit for the Ambulatory Care Project, NEBH agrees to present its proposed CMP at a meeting of the

Mission Hill Planning and Zoning Advisory Committee (PZAC) at which the BTD will be present, in order to let the PZAC and community members have an opportunity to comment on the CMP, including the routes by which construction trucks will gain access to the construction site, and how parking will be managed during the construction period.

13. Traffic Improvements. As described in the Master Plan, in conjunction with construction of the Parking Lots D and F Improvement Project, the Hospital shall undertake the Sachem Street improvements, subject to the approval of the City of Boston's Public Improvement Commission and any other public agency having jurisdiction over such street and sidewalk improvements. In connection therewith, the Hospital agrees to grant an easement for \$1.00 to the City of Boston, of approximately 500 square feet of property within the existing boundaries of Lot D, in order to achieve the proposed Sachem Street improvements. The parties acknowledge that the size of the easement area shall be contingent upon final engineering design of the proposed improvements. This grant of easement rights shall occur prior to issuance of a building permit for the reconstruction of Parking Lots D and F. The parties agree that notwithstanding the foregoing, the Hospital's liability with respect to this commitment shall be limited to \$30,000 for design and construction work.

14. Conservation Restriction. Prior to the issuance of any building permit for the Ambulatory Care Project, NEBH shall deliver to the City of Boston's Conservation Commission (the "Conservation Commission") in escrow, an executed, perpetual conservation restriction ("Conservation Restriction") for an approximately 1.5 acre portion of NEBH-owned land (otherwise known as the "Meadow") as shown on the plan attached hereto as Exhibit C and incorporated herein. The Conservation Restriction shall provide that said land shall be used by the public for passive recreational purposes only. The parties hereby agree that the Conservation Restriction shall be held in escrow by the Conservation Commission, and shall be recorded in the Suffolk County Registry of Deeds only upon the issuance of the certificates of occupancy for the Ambulatory Care Project. The Conservation Restriction shall be granted to and accepted by the City of Boston, acting by and through the Conservation Commission, and shall, except as otherwise provided therein, forbid the Hospital from constructing permanent structures on said land. The parties agree to cooperate so as to achieve approval of the Conservation Restriction by the Conservation Commission, the Boston City Council, the Commonwealth of Massachusetts, and all other parties having jurisdiction over the matter.

15. Mission Link. The Hospital currently provides annual operating support for the Mission Link, Inc. community bus service in the amount of \$35,000. NEBH hereby agrees to continue and increase its annual operating support to the Mission Link, Inc. for five (5) additional years. This increased support shall occur as follows: \$40,000 for 1994, increasing by \$1,000 each year thereafter, through and including 1998. This support shall be conditioned as follows:

- (a) NEBH shall be satisfied that community needs are being met pertaining to routes, schedules, safety conditions and management of the Mission Link;

- (b) NEBH shall have one representative on the Mission Link, Inc. Board of Directors, and the Board of Directors shall meet at least quarterly to review the operations and finances of Mission Link, Inc., taking into account concerns raised by members of the community; and
- (c) Mission Link, Inc. shall prepare, and NEBH shall receive within ten (10) days after the preparation thereof, copies of Mission Link, Inc. annual operating budgets, monthly and annual financial statements, and annual reports to the Commonwealth of Massachusetts Secretary of State.

The parties hereto agree that the Hospital's total financial commitment pursuant to this section is contingent upon the reasonable satisfaction of the foregoing conditions by the Mission Link, Inc.

16. Fourth Tier/McLaughlin Playground and Meadow Improvements and Maintenance. NEBH shall construct improvements to the "Fourth Tier" of McLaughlin Playground ("Fourth Tier") and to the Meadow in accordance with design and contract documents agreed upon by NEBH and approved by the Authority and the City of Boston Parks and Recreation Department ("Parks Department"). These improvements shall be undertaken in conjunction with construction of the Ambulatory Care Project, and shall be completed prior to issuance of any certificate of occupancy therefor, unless otherwise approved by the Authority and the Parks Department. Notwithstanding anything contained herein to the contrary, NEBH's liability for the design and construction of the Fourth Tier improvements shall be limited to \$100,000. Excavate from the Ambulatory Care Project shall be used in conjunction with the construction of the Fourth Tier and Meadow improvements; in that regard, NEBH submitted to the Authority on June 6, 1994 a Phase I Environmental Assessment of the subsurface conditions of the Ambulatory Care Project site (the "Phase I Report"). The Phase I Report states that there are no specific hazardous materials, petroleum product or asbestos-containing issues which would appear to prohibit on-site re-use of the fill materials.

Notwithstanding anything to the contrary contained herein, the Hospital shall continue to maintain McLaughlin Playground through June 23, 1996 as required by the Agreement dated June 23, 1986 between NEBH and the City. At least 30 days prior to either the expiration of that agreement on June 22, 1996 or the earlier termination of such agreement, NEBH shall enter into a Maintenance Agreement with the Parks Department that provides for NEBH's maintenance of the McLaughlin Playground ballfields and the Fourth Tier and Meadow, as improved, for the period beginning from the execution of such agreement, to June 22, 2006. The Maintenance Agreement will include a provision whereby NEBH will provide regular reports to the Parks Department on the status of its maintenance program thereunder, and will make copies of such report available for review by the public. Notwithstanding anything contained herein to the contrary, NEBH's liability for undertaking these additional maintenance obligations shall be limited to \$500,000, or up to \$50,000 per year.

17. Housing Benefits. The parties acknowledge that the Master Plan calls for the demolition of five vacant houses within Parking Lots D and F as part of the Parking Lots D and F Improvement Project. Prior to obtaining demolition permits for those houses, NEBH shall make available \$100,000 to be used for Mission Hill housing stabilization purposes. The direct beneficiaries of these funds are to be Mission Hill homeowners. The parties agree that if the Hospital elects not to operate this housing mitigation program directly, the program shall be administered by an entity acceptable to the Hospital and the Mission Hill Planning and Zoning Advisory Committee (or its successor organization) for similar purposes. Should the administrative mechanism for operating this housing mitigation program not have been selected at the time such demolition permits are issued, the Hospital shall deposit the \$100,000 in housing mitigation funds with an escrow agent reasonably acceptable to the parties.

18. Community Health Care. As a health care institution, NEBH's mission is to provide access to the highest quality patient care. NEBH has made a long-standing commitment to improving the health status of the citizens of Boston, particularly residents of Mission Hill and medically underserved populations. This commitment is manifested in a range of educational, outreach, screening and treatment initiatives, all of which are continually evaluated and refined to optimize their effectiveness, and which also reflect the special focus of NEBH services in musculoskeletal diseases, cardiac diseases, and oncology. Many of these initiatives have been undertaken in concert with the City's health care priorities, such as improving the quality of health care services to the elderly population, and supporting the primary care services of the City's neighborhood health centers. NEBH agrees that for the term of this Agreement, it shall continue to provide a substantial commitment to such community health services.

19. Scholarships. Since 1985, the Hospital's School of Nursing has awarded 59 scholarships to Boston high school graduates; in 1993-1994, the School of Nursing awarded seven such scholarships. The Hospital has also provided a physical therapy scholarship to a Northeastern University Cooperative Program student, as well as a medical technologist scholarship (provided in conjunction with New England Deaconess Hospital's School of Medical Technology). The Hospital has also provided full tuition, fees and books for a full-time, two-year enrollment or part-time, three-year enrollment in Bunker Hill Community's College's Medical Radiography Program. NEBH agrees that for the term of this Agreement, it shall continue to make available up to eight scholarships per year to the Hospital's School of Nursing for needy, qualified Boston high school graduates, with priority given to residents of Mission Hill.

20. Community Activities. NEBH has been, and will continue to be, an active supporter of the myriad community activities, events and organizations which enrich the life of the Mission Hill neighborhood. This on-going support will include reasonable administrative assistance and/or in-kind support, upon reasonable notice, for activities such as a Mission Hill Fair/Road Race, theatrical productions of the Mission Hill Community Theater, Mission Hill Grammar School field trips to the Hospital, a Mission Hill Crime Watch Program, and a Christmas/Hanukkah party for Mission Hill children.

21. Urban Pathways. The Hospital shall work with the City, the Authority and the community to plan and implement an agreed upon system of pedestrian pathways within the Parker Hill area, especially wherever a pathway may traverse Hospital property.

22. Neighborhood Residency. The parties recognize that increasing the percentage of Hospital employees who are residents of the Mission Hill neighborhood will reduce automobile commuting to the Hospital campus and increase the economic benefits available to Mission Hill residents from the Hospital's operations. To that end, the Hospital will continue its on-going activities designed to make the benefits of living in Mission Hill known to Hospital employees. These activities will include maintaining informational pamphlets and materials about the Mission Hill neighborhood (including housing opportunities) for Hospital employees.

23. Waste Disposal. With respect to operations at the Hospital's campus, the Hospital, and all parties holding title under it, will continue to comply with applicable federal, state and local statutes, rules and regulations relating to the generation, processing and disposal of medical wastes, hazardous substances, and hazardous wastes.

24. Real Estate Taxes. NEBH will contact the City of Boston's Assessing Department concerning the real estate taxes and/or payments in lieu of taxes to be paid to the City in connection with the Ambulatory Care Project.

25. BRA Cooperation. The Authority shall cooperate with NEBH in obtaining any further permits, reviews or approvals (including, without limitation, zoning approvals) that may be required for: (i) construction and occupancy of the Master Plan Projects, including the Ambulatory Care Project; (ii) carrying out NEBH's obligations under this Agreement (including, without limitation, approvals necessary for the Conservation Restriction, the Sachem Street improvements, and the Fourth Tier and Meadow improvements); and (iii) re-zoning of the Hospital's campus (as defined in the Master Plan) as an Institutional Sub-District as part of the permanent re-zoning of the Mission Hill neighborhood.

26. Successors and Assigns. This Agreement shall be binding upon and enforceable against NEBH and its successors and assigns in title to the Ambulatory Care Project and the Hospital campus, other than mortgagees of the Ambulatory Care Project or the Hospital campus, or those claiming through such mortgagees, unless said party obtains title to the Ambulatory Care Project or any Master Plan Project, or a portion thereof, and proceeds with development of such Project. This Agreement shall be binding upon and enforceable against the Authority and its successors and assigns; notwithstanding the foregoing, the parties have agreed that this Agreement shall not be recorded.

27. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be

affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

28. Liability. The liability of NEBH arising under this Agreement and of each successor or assign of all or any part of NEBH interest in the Hospital campus, shall be limited solely to such person's or entity's interest in such property, and no partner, trustee, beneficiary, shareholder, officer, director, or the like or any such person or entity, from time to time, or any such person's or entity's separate assets or property shall have or be subject to any personal liability with respect to any obligation or liability of such person or entity hereunder.

29. Authority Consents and Approvals. Whenever the consent or approval of the Authority is required hereunder or otherwise in connection with the Ambulatory Care Project or Master Plan Project, such consent or approval shall not be unreasonably withheld, delayed or conditioned, and wherever there is a requirement hereunder that any thing, act or circumstance shall be satisfactory to the Authority or shall be done and performed to the Authority's satisfaction or any other requirement of similar import, the Authority covenants not to be unreasonable with respect thereto.

30. Estoppel Certificates. The Authority shall, within ten (10) business days after written request therefor by NEBH or any mortgagee of NEBH, provide a certificate in writing, as requested or applicable, that this Agreement or any particular section hereof specified by the requesting party is in full force and effect and unmodified, or in what respects the Agreement is no longer in force or effect or has been modified, that NEBH is in compliance with this Agreement or any particular section hereof specified by the requesting party, or in what respects there is non-compliance, or as to any other matter reasonably related to this Agreement which the requesting party may reasonably request of the Authority.

31. Authorization of the Authority. The Authority has authorized the Director of the Authority to take any action hereunder on behalf of the Authority (including, but not limited to, the granting of consents or approvals and the execution and delivery of agreements and certificates, except for any Certificates of Completion), and any action so taken shall be binding upon the Authority.

32. Notices. Whenever under this Agreement notices, approvals, authorizations, determinations, satisfactions or waivers are required or permitted, such notices, approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the Authority or NEBH, and shall be deemed given when hand-delivered, delivered by recognized overnight courier service, or

delivered by United States mail sent registered or certified, postage prepaid, to the principal office of the party to whom it is directed, which is as follows:

if to the Authority: Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201-1007
Attention: Director

with a copy to: Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201-1007
Attention: Chief General Counsel

if to NEBH: New England Baptist Hospital
125 Parker Hill Avenue
Boston, Massachusetts 02120
Attention: Gary E. Reed, Sr. Vice President,
Operations

with a copy to: Goodwin, Procter & Hoar
Exchange Place
Boston, Massachusetts 02109-2881
Attention: Lawrence E. Kaplan, P.C.

The parties shall promptly notify each other of any changes of their respective addresses set forth above.

Any requests for approvals made to the Authority by NEBH where such approvals shall be deemed granted after a period of non-reply by the Authority shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in boldface type:

"NOTICE: THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY. FAILURE TO RESPOND WITHIN ____ BUSINESS DAYS SHALL RESULT IN AUTOMATIC APPROVAL."

33. Term. This Agreement shall expire ten (10) years from the date hereof, and the provisions contained herein shall be null and void as of such date of expiration, subject to specific time periods set forth herein with regard to specific provisions.

34. Amendment. This Agreement, or any part thereof, may be amended from time to time hereafter only in writing executed by the Authority and NEBH.

35. Execution in Counterparts/Multiple Originals. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together

shall constitute but one and the same instrument. The parties have agreed to execute multiple original copies of this Agreement.

36. Governing Law. This Agreement shall be governed and construed by the laws of the Commonwealth of Massachusetts.

37. Prior Agreement. The parties acknowledge that except as otherwise provided in Section 16 herein, this Agreement is intended to supersede and replace the Agreement between NEBH and the City of Boston, acting by and through its Inspectional Services Department, dated June 23, 1986. The Authority shall cooperate with the Hospital to obtain formal acknowledgement in this regard from ISD.

38. Enforcement of Agreement. It is the intention of the parties that the provisions of this Agreement may be enforced only by the parties hereto, and that no other person or persons shall be authorized to undertake any action to enforce any provisions hereof without the prior written consent of the parties.

EXECUTED as a sealed instrument as of the date first above written.

Approved as to Form:

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Chief General Counsel
Boston Redevelopment
Authority

By: _____
Marisa Lago, Director
Duly Authorized

NEW ENGLAND BAPTIST HOSPITAL

By: _____

Name: _____

Title: _____
Duly Authorized

Attachments:

- Exhibit A: New England Baptist Hospital Master Plan 1994-1999, dated July 15, 1994
- Exhibit B: Development Review Procedures, dated 1985, revised 1986
- Exhibit C: Plan of Proposed Conservation Restriction Area

